

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)
)
)
V.) **CR. No.: 1:06cr197-MEF**
)
RODERICK CHARLES MELVIN)

MOTION TO SUPPRESS EVIDENCE

COMES NOW, the Defendant, Roderick Charles Melvin, by and through undersigned counsel, Kevin L. Butler, and moves this Court for an Order suppressing all evidence (including statements) illegally seized in this case on July 24, 2005, by Dale County Sheriff deputies.

Facts

Mr. Roderick Charles Melvin is a 42 year old black male. On July 24, 2005, Dale County Sheriff Deputies Crooks and Fleshman (the deputies) responded to a “suspicious person” call at Grimes Petro on County Road 112 in Daleville, Alabama (gas station).¹ When the deputies arrived at the scene, no one reported criminal activity, no one reported observing anyone in possession of contraband and no one reported seeing a vehicle commit any traffic violations. However, the deputies were informed by some unknown person that a “suspicious person” had just entered a teal

¹ The discovery in this case provides absolutely no explanation as to what “suspicious person” call means. There is absolutely no information indicating that the “suspicious person” committed any criminal offense at the gas station or was observed in possession of contraband at the gas station. Undersigned counsel believes “suspicious person” may reference an improper and illegal classification of persons.

colored vehicle (the vehicle).² Based solely upon a representation that a “suspicious person” had entered a teal colored vehicle, the deputies stopped the vehicle.³ Roderick Charles Melvin was a passenger in the vehicle. After the vehicle stop, contraband (including a firearm) was located.

Based upon items found in the vehicle, Mr. Melvin was subsequently charged with being a felon in possession of a firearm.

Argument

The stop of the vehicle was not based upon probable cause or information indicating that he had violated any traffic laws, that the vehicle occupants had committed a criminal offense or that the vehicle contained contraband. Therefore, the subsequent stop, search and seizure were illegal and improper.

The Fourth Amendment guarantees “the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures.” Const. Amend IV. “[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 88 S.Ct. 507, 514 (1967) (internal citations omitted).

One of those exceptions is the stop of a vehicle. **However**, police may only stop a vehicle if the totality of circumstances show that there is probable cause to believe occupant(s) have violated

² The discovery provided does not indicate who informed the sheriff deputies that a “suspicious person” had entered the teal vehicle.

³ It is unclear whether the teal colored vehicle was at the gas station or had just left it. Regardless of its location, the officers did not have cause to stop the vehicle. However, the fact that the officers may have randomly stopped a teal colored vehicle may be of import a hearing on this motion.

the law (i.e. committed a traffic violation or some other offense). *United States v. Arvizu*, 122 S.Ct. 744 (2002). And though a police officers may order an individual out of the vehicle once it is stopped, there must be some legitimate basis (i.e. traffic violation or criminal activity observation) for the stop of the vehicle. *Wren v. United States*, 517 U.S. 806 (1996); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977).

In this case, there was absolutely no justification for the stop. The police had not observed the vehicle commit any traffic offense. Additionally, neither the police nor any other person had observed anyone in the vehicle commit a criminal offense or possess contraband. The vehicle was stopped solely because someone had reported a “suspicious person” had entered it. Stops based upon this form of subjective and possibly biased motive are illegal and improper.

WHEREFORE, Mr. Melvin asks this Court to enter an order suppressing all evidence (including statements) seized as a result of the stop of the vehicle on July 24, 2005

Dated this 11th day of October 2006.

Respectfully submitted,

s/ Kevin L. Butler
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CERTIFICATE OF SERVICE

I hereby certify that on October 11, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Tommie Hardwick, Esquire
Assistant United States Attorney
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Respectfully submitted,

s/ Kevin L. Butler
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